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EMBARGOED MATERIAL

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MEMORANDUM

To: Dennis Giorno

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From: Kevin McKenna, Esq.

INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: Proposed 22 Pa. Code Chapter 711 changes

Date: June 18, 2008

The Legislature was clear in its intent, in enacting the Pennsylvania Charter School Law, 24 P.S. 17-1701-A, et seq., and more particularly at Section 17-1726-A, that a school district of residence must provide free transportation to charter school students for the dates and periods of time that the charter school is in session. Furthermore, the Legislature stated in Section 17-1726-A(b) that if the Secretary of Education determines that such required transportation is not being provided by the school district, then the Department of Education shall pay to the charter school directly, the cost incurred for such transportation.

The funding provisions of Section 17-1725-A state even more specifically of the Legislature's intent that the school district provide transportation services for special education students by direct inclusion of "student transportation services" in the language of the law.

The language of both Sections 17-1725-A and 17-1726-A of the Charter School Law should be included in the regulations for charter schools given the Legislature's clear intent to place the burden of the cost of transportation services on the school district, the entity more able to bear such cost and which retains a portion of funding from the charter schools specifically for transportation of the charter schools' regular and special education students.

The Pennsylvania Supreme Court in Mosaica Academy Charter School v. Com. Dept. of Educ. 572 Pa. 191, 206; 813 A.2d 813, 822 (Pa., 2002), went even further in holding,

"Thus, although the General Assembly was clear in defining a charter school as a public school, it went to great lengths to treat the charter schools akin to private schools for purposes of transportation... Thus, we conclude that the General Assembly elected to require transportation to resident students attending a charter school located outside of its district by incorporating Section 1361 to define the level of transportation to be provided to non-resident students."

The current Chapter 711 regulations at section 711.42 are in accord with the Legislature's intent for the school district to provide transportation for special education students attending a public charter school by stating,

"(a) A child with a disability who resides in the school district in which the charter school is located, or who is a resident of a school district which is part of

a regional charter school, shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Nonresident students shall be provided transportation under section 1361 of the Public School Code of 1949 (24 P. S. § 13-1361).

The proposed Chapter 711.42 conflicts with the Legislature's clear intent as evidenced by the above-cited sections of the PA Charter School Law and the Pennsylvania Supreme Court's decision in *Mosaica, supra.*, by attempting to distinguish certain portions of the transportation costs of special education students which are required by a student's IEP or 504 Agreement. There is no support for such a distinction in the law as it was passed nor through any precedent established by the Supreme Court or any other court in Pennsylvania.

Copies of Sections 17-1725-A and 17-1726-A are attached to this Memo for your review.

Section 24 P.S. § 17-1726-A of the Charter School Law regarding transportation states:

§ 17-1726-A. Transportation

(a) Students who attend a charter school located in their school district of residence, a regional charter school of which the school district is a part or a charter school located outside district boundaries at a distance not exceeding ten (10) miles by the nearest public highway shall be provided free transportation to the charter school by their school district of residence on such dates and periods that the charter school is in regular session whether or not transportation is provided on such dates and periods to students attending schools of the district. Transportation is not required for elementary students, including kindergarten students, residing within one and one-half (1.5) miles or for secondary students residing within two (2) miles of the nearest public highway from the charter school in which the students are enrolled unless the road or traffic conditions are such that walking constitutes a hazard to the safety of the students when so certified by the Department of Transportation, except that if the school district provides transportation to the public schools of the school district for elementary students, including kindergarten students, residing within one and one-half (1.5) miles or for secondary students residing within two (2) miles of the nearest public highway under nonhazardous conditions, transportation shall also be provided to charter schools under the same conditions. Districts providing transportation to a charter school outside the district shall be eligible for payments under section 2509.3 for each public school student transported.

(a.1) In addition to any other requirements in this section, school districts of the first class shall provide transportation to students who attend a charter school if they are the same age or are enrolled in the same grade, grades or their grade equivalents as any of the students of the school district for whom transportation is provided under any program or policy to the schools of the school district.

(b) In the event that the Secretary of Education determines that a school district is not providing the required transportation to students to the charter school, the Department of Education shall pay directly to the charter school funds for costs incurred in the transportation of its students. Payments to a charter school shall be determined in the following manner: for each eligible student transported, the charter school shall receive a payment equal to the total expenditures for transportation of the school district divided by the total number of school students transported by the school district under any program or policy.

(c) The department shall deduct the amount paid to the charter school under subsection (b) from any and all payments made to the district.

(d) A school district of the first class shall submit a copy of its current transportation policy to the department no later than August 1 of each year.

§ 17-1725-A. Funding for charter schools

(a) Funding for a charter school shall be provided in the following manner:

(1) There shall be no tuition charge for a resident or nonresident student attending a charter school.

(2) For non-special education students, the charter school shall receive for each student enrolled no less than the budgeted total expenditure per average daily membership of the prior school year, as defined in section 2501(20), minus the budgeted expenditures of the district of residence for nonpublic school programs; adult education programs; community/junior college programs; student **transportation** services; for special education programs; facilities acquisition, construction and improvement services; and other financing uses, including debt service and fund transfers as provided in the Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems established by the department. This amount shall be paid by the district of residence of each student.

(3) For special education students, the charter school shall receive for each student enrolled the same funding as for each non-special education student as provided in clause (2), plus an additional amount determined by dividing the district of residence's total special education expenditure by the product of multiplying the combined percentage of section 2509.5(k) times the district of residence's total average daily membership for the prior school year. This amount shall be paid by the district of residence of each student.

(4) A charter school may request the intermediate unit in which the charter school is located to provide services to assist the charter school to address the specific needs of exceptional students. The intermediate unit shall assist the charter school and bill the charter school for the services. The intermediate unit may not charge the charter school more for any service than it charges the constituent districts of the intermediate unit.

(5) Payments shall be made to the charter school in twelve (12) equal monthly payments, by the fifth day of each month, within the operating school year. A

student enrolled in a charter school shall be included in the average daily membership of the student's district of residence for the purpose of providing basic education funding payments and special education funding pursuant to Article XXV. If a school district fails to make a payment to a charter school as prescribed in this clause, the secretary shall deduct the estimated amount, as documented by the charter school, from any and all State payments made to the district after receipt of documentation from the charter school.

(6) Within thirty (30) days after the secretary makes the deduction described in clause (5), a school district may notify the secretary that the deduction made from State payments to the district under this subsection is inaccurate. The secretary shall provide the school district with an opportunity to be heard concerning whether the charter school documented that its students were enrolled in the charter school, the period of time during which each student was enrolled, the school district of residence of each student and whether the amounts deducted from the school district were accurate.

(b) The Commonwealth shall provide temporary financial assistance to a school district due to the enrollment of students in a charter school who attended a nonpublic school in the prior school year in order to offset the additional costs directly related to the enrollment of those students in a public charter school. The Commonwealth shall pay the school district of residence of a student enrolled in a nonpublic school in the prior school year who is attending a charter school an amount equal to the school district of residence's basic education subsidy for the current school year divided by the district's average daily membership for the prior school year. This payment shall occur only for the first year of the attendance of the student in a charter school, starting with school year 1997-1998. Total payments of temporary financial assistance to school districts on behalf of a student enrolling in a charter school who attended a nonpublic school in the prior school year shall be limited to funds appropriated for this program in a fiscal year. If the total of the amount needed for all students enrolled in a nonpublic school in the prior school year who enroll in a charter school exceeds the appropriation for the temporary financial assistance program, the amount paid to a school district for each qualifying student shall be pro rata reduced. Receipt of funds under this subsection shall not preclude a school district from applying for a grant under subsection (c).